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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,907	09/19/2005	Christophe Lorthioir	05-111	1678
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EXAMINER				
CHIN, PAUL T				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/521,907

**Applicant(s)**

LORTHIOIR ET AL.

**Examiner**

PAUL T. CHIN

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-34 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 18-34 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 20 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 1/20/05  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. It is noted that this application appears to claim subject matter disclosed in prior Application No. 02/09383, filed Jul 24, 2002, in France. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept

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an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "locking pin" (claims 18, and 24-28). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on Jan 20, 2005, was filed and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Specification***

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 18-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited languages of claims 18-34 are vague and indefinite. For instance, the recitations of "the members forming the gripper" in claim 18, line 8, "forming the gripper in translation when the lever is pivoted" claim 18, lines 17-18, and "separating the two

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members forming the gripper in the closed position" in claim 18, lines 19-20, are unclear as to how "the members forms the gripper". Moreover, applicant recites, "the mobile member forming the gripper when the mobile member forming the gripper" in claim 18, lines 22-24, and the recitation is vague and indefinite as to how "the mobile member forming the gripper when the mobile member forming the gripper". Further, claim 22 recites, "the through cross-section of the housing becomes larger when the two members forming the gripper become closer to each other" and it is unclear how "the housing becomes larger when the two members forming the gripper become closer to each other". Claims 29 and 31 recite, " the displacement means are" and "the transmission means are", but claim 18 recites only a singular displacement means or the transmission means. Therefore, it is unclear applicant is claiming a singular displacement means or transmission means or plural displacement means or transmission means. The recitation of "a length of the lever corresponds to a width of the three fingers in claimed contact with each other" in claim 33 is vague and indefinite. The recited phrase "a width of three fingers" is unclear.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 18-32, as best understood, are rejected under 35 U.S.C. 102(b) being anticipated by Nicollet et al. (5,704,092).

Nicollet et al. discloses a removable gripping device for a container (1), comprising two members (13, 14) having a fixed gripper (13), a movable finger (14), a displacement

means, a pivotal lever (12) (Fig. 3), and a locking means (16) including a locking pin (24).

Re ding claim 19, Nicollet et al. teaches that the housing has a through cross- section that depends on the position of the mobile member forming the gripper in the closed position (figures 1, 2).

Re claim 20, Nicollet et al. teaches that the housing comprises a cavity formed in the gripping body and a slot formed through the mobile member forming the gripper (figures 1, 2).

Re claim 21, Nicollet et al. teaches the slot being is located approximately facing the cavity when the mobile member forming the gripper is in the closed position (figures 1,2).

Re claim 22, Nicollet et al., as best understood, teaches wherein the through cross-section of the housing becomes larger when the two members forming the gripper become closer to each other when in the closed position (figures 1, 2).

Re claim 23, Nicollet et al. teaches wherein the locking pin is installed on the lever (figures 1-2).

Re claim 24, Nicollet et al. teaches wherein the locking pin is installed free to move in translation with respect to the lever and a locking spring (19) continuously tends to move the locking pin towards the direction of the housing (figures 1-2).

Re claim 25, Nicollet et al. teaches wherein the lever is in the retracted position the locking pin bears in contact with a wall delimiting the cavity in the direction of the members forming the gripper regardless of a distance separating the two members forming the gripper (figures 1-2).

Re claims 26 -28, Nicollet et al. teaches the locking pin is being flared from a head as far as a base (see Fig. 3) through which the locking pin is connected to the displacement

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means, by a straight wall connecting the head to the base, by a stepped wall consisting of several steps and connecting the head to the base (figures 1-2).

Re claim 29, Nicolle et al. is substantially shape capable of being different positions.

Re claim 30, Nicolle et al. teaches a spring (15) housed in the transmission means and adapted to apply a force to the mobile member so as to adjust a distance separating the two members forming the gripper (figures 1-2).

Re claims 31 and 32, Nicolle et al. teaches wherein the transmission means are formed from a connecting rod (20) free to move in rotation with respect to the lever and to the mobile member forming the gripper (column 4 lines 3-9), and the connecting rod is mounted free to rotate on the lever about a shaft (20b) close to an end of the lever opposite an end through which the lever is connected to the gripping body (figures 1-2).

10. Claims 18-32 as best understood, are also rejected under 35 U.S.C. 102(b) being anticipated by Montgelard (6,000,100).

Montgelard teaches a removable gripping device (figure 3) for a container, comprising: two members (1, 2) forming a gripper mounted on a gripping body (3) in which one of the members forming a gripper is mobile (1), a displacement means having a lever (5) free to move in rotation with respect to the gripping body between an extended position and a retracted position in which the mobile member forming the gripper is in the closed position (figures 3 and 6), and a transmission means extending between the lever and the mobile member forming the gripper adapted to displacing the mobile member forming the gripper in translation when the lever is pivoted (column 3 lines 19-31), and the locking means comprises a locking pin (5a) installed on the displacement means and designed to penetrate into a housing (3) when the lever is in the retracted position (figure



6).

Re claim 19, Montgelard teaches wherein the housing has a through cross-section that depends on the position of the mobile member forming the gripper in the closed position (figures 3, 6).

Re claim 20, Montgelard teaches wherein the housing comprises a cavity formed in the gripping body and a slot formed through the mobile member forming the gripper (figures 3, 6).

Re claim 21, Montgelard teaches wherein the slot is located approximately facing the cavity when the mobile member forming the gripper is in the closed position (figures 3, 6).

Re claim 22, Montgelard teaches wherein the through cross-section of the housing becomes larger when the two members forming the gripper become closer to each other when in the closed position (figures 3, 6).

Regarding claim 23, Montgelard teaches wherein the locking pin is installed on the lever (figures 3, 6).

Re claim 24, Montgelard teaches wherein the locking pin is installed free to move in translation with respect to the lever and a locking spring (6, column 4 lines 53-57) continuously tends to move the locking pin towards the direction of the housing (figures 3, 6).

Re claim 25, Montgelard teaches wherein the lever is in the retracted position the locking pin bears in contact with a wall delimiting the cavity in the direction of the members forming the gripper regardless of a distance separating the two members forming the gripper (figure 6).

Re claims 26 -28, Montgelard teaches wherein the locking pin is flared from a head as

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far as a base through which the locking pin is connected to the displacement means, by a straight wall connecting the head to the base, by a stepped wall consisting of several steps and connecting the head to the base (figures 3, 6).

Re claim 29, Montgelard is substantially shape capable of being different positions.

Regarding claim 30, Montgelard teaches further comprising a spring (6, column 4 lines 53-57) housed in the transmission means and adapted to apply a force to the mobile member so as to adjust a distance separating the two members forming the gripper (figures 3, 6).

Re claim 31, Montgelard teaches wherein the transmission means are formed from a connecting rod (6) free to move in rotation with respect to the lever and to the mobile member forming the gripper (figures 3, 6).

Re claim 32, Montgelard teaches wherein the connecting rod is mounted free to rotate on the lever about a shaft (6a) close to an end of the lever opposite an end through which the lever is connected to the gripping body (figures 3, 6).

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicollet et al. (5,704,092).

Nicollet et al., as presented above, does not show a structural dimension of the lever and the gripping body. However, it would have been obvious to those skilled in the art to

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optimize the size of the lever and the gripping body of Nicollet et al. (5,704,092) to provide a firm and comfort grip to a user.

13. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgelard (6,000,100).

Montgelard (6,000,100), as presented above, does not show a structural dimension of the lever and the gripping body. However, it would have been obvious to those skilled in the art to optimize the size of the lever and the gripping body of Montgelard (6,000,100) to provide a firm and comfort grip to a user.

#### ***Double Patenting***

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 18-34 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/521,475.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both of the instant application and copending Application No. 10/521,475 recite "two

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members having a fixed gripper, a movable finger, a displacement means, a pivotal lever, and a locking means including a locking pin".

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571)272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL T. CHIN/  
Examiner, Art Unit 3652